

By: Representative Guice

To: Labor

HOUSE BILL NO. 671

1 AN ACT TO AMEND SECTION 71-5-513, MISSISSIPPI CODE OF 1972,
2 TO INCLUDE CERTAIN USES OF DRUGS UNDER THE DEFINITION OF
3 MISCONDUCT FOR WHICH A PERSON SHALL BE DISQUALIFIED FOR
4 UNEMPLOYMENT COMPENSATION BENEFITS; AND FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6 **SECTION 1.** Section 71-5-513, Mississippi Code of 1972, is
7 amended as follows:

8 71-5-513. A. An individual shall be disqualified for
9 benefits:

10 (1) (a) For the week, or fraction thereof, which
11 immediately follows the day on which he left work voluntarily
12 without good cause, if so found by the commission, and for each
13 week thereafter until he has earned remuneration for personal
14 services performed for an employer, as in this chapter defined,
15 equal to not less than eight (8) times his weekly benefit amount,
16 as determined in each case, provided that marital, filial and
17 domestic circumstances and obligations shall not be deemed good
18 cause within the meaning of this subsection. Pregnancy shall not
19 be deemed to be a marital, filial or domestic circumstance for the
20 purpose of this subsection.

21 (b) For the week, or fraction thereof, which
22 immediately follows the day on which he was discharged for
23 misconduct connected with his work, if so found by the commission,
24 and for each week thereafter until he has earned remuneration for
25 personal services performed for an employer, as in this chapter
26 defined, equal to not less than eight (8) times his weekly benefit
27 amount, as determined in each case.



28 (c) The burden of proof of good cause for leaving
29 work shall be on the claimant, and the burden of proof of
30 misconduct shall be on the employer.

31 (d) For purposes of this section, "misconduct,"
32 for which an individual has been discharged, includes, but is not
33 limited to, the following:

34 (i) Refusal to submit to a drug test;

35 (ii) A positive test of a nonprescribed
36 controlled substance during a preemployment, randomly administered
37 or mandatory drug test conducted by an employer; or

38 (iii) Abuse of a prescribed drug.

39 The unauthorized or illicit use of a controlled substance
40 must be verified by a confirmed analysis by a certified
41 laboratory. The misconduct disqualification shall apply whether
42 the abuse occurred on or off the job.

43 (2) For the week, or fraction thereof, with respect to
44 which he willfully makes a false statement, a false representation
45 of fact, or willfully fails to disclose a material fact for the
46 purpose of obtaining or increasing benefits under the provisions
47 of this law, if so found by the commission, and such individual's
48 maximum benefit allowance shall be reduced by the amount of
49 benefits so paid to him during any such week of disqualification;
50 and additional disqualification shall be imposed for a period not
51 exceeding fifty-two (52) weeks, the length of such period of
52 disqualification and the time when such period begins to be
53 determined by the commission, in its discretion, according to the
54 circumstances in each case.

55 (3) If the commission finds that he has failed, without
56 good cause, either to apply for available suitable work when so
57 directed by the employment office or the commission, to accept
58 suitable work when offered him, or to return to his customary
59 self-employment (if any) when so directed by the commission, such
60 disqualification shall continue for the week in which such failure



61 occurred and for not more than the twelve (12) weeks which
62 immediately follow such week, as determined by the commission
63 according to the circumstances in each case.

64 (a) In determining whether or not any work is
65 suitable for an individual, the commission shall consider among
66 other factors the degree of risk involved to his health, safety
67 and morals, his physical fitness and prior training, his
68 experience and prior earnings, his length of unemployment and
69 prospects for securing local work in his customary occupation, and
70 the distance of the available work from his residence; provided,
71 however, that offered employment paying the minimum wage or
72 higher, if such minimum or higher wage is that prevailing for his
73 customary occupation or similar work in the locality, shall be
74 deemed to be suitable employment after benefits have been paid to
75 the individual for a period of eight (8) weeks.

76 (b) Notwithstanding any other provisions of this
77 chapter, no work shall be deemed suitable and benefits shall not
78 be denied under this chapter to any otherwise eligible individual
79 for refusing to accept new work under any of the following
80 conditions:

81 (i) If the position offered is vacant due
82 directly to a strike, lockout or other labor dispute;

83 (ii) If the wages, hours or other conditions
84 of the work offered are substantially less favorable to the
85 individual than those prevailing for similar work in the locality;

86 (iii) If as a condition of being employed the
87 individual would be required to join a company union or to resign
88 from or refrain from joining any bona fide labor organization.

89 (4) For any week with respect to which the commission
90 finds that his total unemployment is due to a stoppage of work
91 which exists because of a labor dispute at a factory,
92 establishment or other premises at which he is or was last



93 employed; provided, that this subsection shall not apply if it is
94 shown to the satisfaction of the commission:

95 (a) He is unemployed due to a stoppage of work
96 occasioned by an unjustified lockout, provided such lockout was
97 not occasioned or brought about by such individual acting alone or
98 with other workers in concert; or

99 (b) He is not participating in or directly
100 interested in the labor dispute which caused the stoppage of work;
101 and

102 (c) He does not belong to a grade or class of
103 workers of which, immediately before the commencement of stoppage,
104 there were members employed at the premises at which the stoppage
105 occurs, any of whom are participating in or directly interested in
106 the dispute.

107 Provided, that if in any case separate branches of work which
108 are commonly conducted as separate businesses in separate premises
109 are conducted in separate departments of the same premises, each
110 such department shall, for the purposes of this subsection, be
111 deemed to be a separate factory, establishment or other premises.

112 (5) For any week with respect to which he has received
113 or is seeking unemployment compensation under an unemployment
114 compensation law of another state or of the United States.

115 Provided, that if the appropriate agency of such other state or of
116 the United States finally determines that he is not entitled to
117 such unemployment compensation benefits, this disqualification
118 shall not apply. Nothing in this subsection contained shall be
119 construed to include within its terms any law of the United States
120 providing unemployment compensation or allowances for honorably
121 discharged members of the Armed Forces.

122 (6) For any week with respect to which he is receiving
123 or has received remuneration in the form of payments under any
124 governmental or private retirement or pension plan, system or
125 policy which a base-period employer is maintaining or contributing



126 to or has maintained or contributed to on behalf of the
127 individual; provided, that if the amount payable with respect to
128 any week is less than the benefits which would otherwise be due
129 under Section 71-5-501, he shall be entitled to receive for such
130 week, if otherwise eligible, benefits reduced by the amount of
131 such remuneration. However, on or after the first Sunday
132 immediately following July 1, 2001, no social security payments,
133 to which the employee has made contributions, shall be deducted
134 from unemployment benefits paid for any period of unemployment
135 beginning on or after the first Sunday following July 1, 2001.
136 This one-hundred-percent exclusion shall not apply to any other
137 governmental or private retirement or pension plan, system or
138 policy. If benefits payable under this section, after being
139 reduced by the amount of such remuneration, are not a multiple of
140 One Dollar (\$1.00), they shall be adjusted to the next lower
141 multiple of One Dollar (\$1.00).

142 (7) For any week with respect to which he is receiving
143 or has received remuneration in the form of a back pay award, or
144 other compensation allocable to any week, whether by settlement or
145 otherwise. Any benefits previously paid for weeks of unemployment
146 with respect to which back pay awards, or other such compensation,
147 are made shall constitute an overpayment and such amounts shall be
148 deducted from the award by the employer prior to payment to the
149 employee, and shall be transmitted promptly to the commission by
150 the employer for application against the overpayment and credit to
151 the claimant's maximum benefit amount and prompt deposit into the
152 fund; provided, however, the removal of any charges made against
153 the employer as a result of such previously paid benefits shall be
154 applied to the calendar year and the calendar quarter in which the
155 overpayment is transmitted to the commission, and no attempt shall
156 be made to relate such a credit to the period to which the award
157 applies. Any amount of overpayment so deducted by the employer
158 and not transmitted to the commission shall be subject to the same



159 procedures for collection as is provided for contributions by
160 Sections 71-5-363 through 71-5-381. Any amount of overpayment not
161 deducted by the employer shall be established as an overpayment
162 against the claimant and collected as provided above. It is the
163 purpose of this paragraph to assure equity in the situations to
164 which it applies, and it shall be construed accordingly.

165 B. Notwithstanding any other provision in this chapter, no
166 otherwise eligible individual shall be denied benefits for any
167 week because he is in training with the approval of the
168 commission; nor shall such individual be denied benefits with
169 respect to any week in which he is in training with the approval
170 of the commission by reason of the application of provisions in
171 Section 71-5-511, subsection (c), relating to availability for
172 work, or the provisions of subsection A(3) of this section,
173 relating to failure to apply for, or a refusal to accept, suitable
174 work.

175 C. Notwithstanding any other provisions of this chapter, no
176 otherwise eligible individual shall be denied benefits for any
177 week because he or she is in training approved under Section
178 236(a)(1) of the Trade Act of 1974, nor shall such individual be
179 denied benefits by reason of leaving work to enter such training,
180 provided the work left is not suitable employment, or because of
181 the application to any such week in training of provisions in this
182 law (or any applicable federal unemployment compensation law),
183 relating to availability for work, active search for work or
184 refusal to accept work.

185 For purposes of this section, the term "suitable employment"
186 means with respect to an individual, work of a substantially equal
187 or higher skill level than the individual's past adversely
188 affected employment (as defined for purposes of the Trade Act of
189 1974), and wages for such work at not less than eighty percent
190 (80%) of the individual's average weekly wage as determined for
191 the purposes of the Trade Act of 1974.



192 **SECTION 2.** This act shall take effect and be in force from
193 and after July 1, 2003.

